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10/081,040	02/20/2002	Richard G. Dalgetty	XENOP008/PXE-037.US	8481
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BEYER WEAVER LLP			EXAMINER	
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			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/081,040

Applicant(s)

DALGETTY ET AL.

Examiner

Annette F. Dixon

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3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 23-26, 28-30 and 39-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 23-26, 28-30 and 39-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office Action is in response to the amendment filed on April 6, 2007.

Examiner acknowledges claims 1-13, 23-26, 28-30, 39-64 are pending in this application, with claims 39-64 having been newly added, claims 1, 10, and 23 having been amended, claims 14-22, 27, and 31-38 having been cancelled.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-13, 23-26, 28-30, and 39-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (6,776,158) in view of LaBauve (4,520,808).

As to Claims 1, 39, 42, 45, and 51, Anderson discloses a gas delivery system (1) capable of delivering an anesthesia gas to a plurality of gas outlets, the system (1) comprising: an oxygen inlet (represented by the oxygen exiting the source, element.2,

into the anesthesia gas source, element 9) that receives oxygen from an oxygen source; a pressure regulator (3) having an inlet that receives oxygen from the oxygen inlet and having an outlet that provides oxygen at a lower pressure; an anesthesia gas source (9) having an inlet coupled to receive low pressure oxygen from the outlet of the pressure regulator (3) and capable of adding anesthesia gas to the low pressure oxygen (Column 4, Lines 30-45); a first gas delivery outlet (8a) coupled to a gas delivery device, and a second gas delivery outlet (8b) coupled to an induction chamber (92) and capable of providing anesthesia gas and oxygen to the induction chamber (Column 7, Lines 23-54). (Figure 1). Yet, Anderson does not expressly disclose the particulars of the first gas delivery outlet to be able to deliver gas to a plurality of living specimens. However, at the time the invention was made the particular structure of the first gas delivery outlet device was well known. Specifically, LaBauve teaches a gas deliver device for holding multiple laboratory animals horizontally disposed along a front face of the gas delivery device and capable of simultaneously providing anesthesia gas and oxygen to the multiple laboratory animals for the purpose of ensuring the laboratory animals are exposed to a uniform concentration of the anesthesia gas. (Abstract and Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Anderson to include the particular structural elements of the first gas delivery outlet device, as taught by LaBauve to enable uniform distribution of anesthesia gas to the laboratory animals.

As to Claim 2, the system of Anderson as modified by LaBauve discloses a first gas delivery outlet comprising an outlet port (38). Anderson discloses a flow control

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device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 3, the system of Anderson as modified by LaBauve discloses a second gas delivery outlet comprising an outlet port (25). Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 4, Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas

source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 5, Anderson discloses the gas delivery system is capable of producing a flow rate between 0 L/min to 5 L/min. (Column 11, Lines 60-65).

As to Claims 6-8, and 28-30, Anderson discloses the gas delivery system contains a gas scavenger to enable the collection of anesthesia gas to be scavenged from the induction chamber. (Column 7, Line 55 thru Column 8, Line 20).

As to Claim 9, Anderson discloses a purge inlet (24) capable of providing oxygen to the induction chamber. (Column 7, Lines 58-63).

As to Claims 10-12, 23-26, 40, 41, 43, 44, 46, 48-50, 52, 53, 54-59, and 62-64, Anderson discloses the gas delivery device comprises an inlet for receiving anesthesia gas and oxygen (7) and at least one channel (10) for communicating anesthesia gas and oxygen between the inlet and the multiple specimen interfaces. Further LaBauve teaches the use of a conical nose-piece (Figure 3) and a conical structure (22) to enable uniform discharge of gases and to prevent the animal from gnawing on the device. (Column 3, Lines 40-46 and Column 4, Lines 4-18).

As to Claim 13, Anderson discloses the flow from the inlet for receiving anesthesia gas and oxygen (7) are substantially equal by the location of the flow regulator (11).

As to Claim 47, the system of Anderson as modified by LaBauve discloses the laboratory animal holder device are separate and distinct, yet does not expressly disclose the thickness of the light barrier. However, at the time the invention was made the thickness of the light barrier would be dependant on the material used in the construction of the holder device. (Column 4, Lines 49-60). Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Anderson and LaBauve in a spatially arranged orientation that would prevent heat build-up and prevent the animals from becoming anxious within the enclosed environment.

As to Claims 60 and 61, the system of Anderson as modified by LaBauve as addressed in claim 1 recites all the recited limitations of the claims including the mouse interface capable of holding at least a part of the head of the mouse (Figure 3, Column 4, Lines 4-18) and a scavenging system having a plurality of holes (18) disposed around the mouse interface for removing the anesthesia gas from the exposure site (14) to the exhaust site (16) and out to a vacuum or scavenging source via the outlet (38). (Figures 1-3).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-13, 23-26, 28-30, and 39-64 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jaeger (5,297,502) and Cannon et al. (4,721,060).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

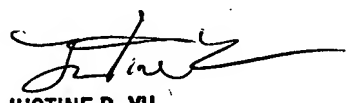


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Annette F. Dixon  
Examiner  
Art Unit 3771

  
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5/23/07